

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-217484

**DATE:** February 11, 1986

**MATTER OF:** Joel O. Brende - Real Estate Title  
Requirements

**DIGEST:**

An employee, between the time he received notice of his transfer and the date he reported to his new duty station, married the woman whose home had been his residence at the time he received notice of his transfer. He may not be reimbursed for real estate expenses associated with the sale of that residence since he did not acquire his interest in the residence prior to the date he was definitely informed of his transfer. At that time he had neither a direct nor a derivative interest in the property and, thus, did not satisfy the requirements of Federal Travel Regulations paragraph 2-6.1c. 53 Comp. Gen. 90 (1973) is overruled.

The Veterans Administration has requested a decision concerning the claim of a transferred employee, Dr. Joel O. Brende, for reimbursement of real estate expenses associated with the sale of a residence at his old official duty station. The residence in question was originally owned solely by the woman Dr. Brende married after he received notification of his transfer. We hold that Dr. Brende may not be reimbursed for any of the real estate expenses associated with the sale of that residence since he did not acquire his interest in the residence prior to the date he was definitely informed of his transfer, as required by paragraph 2-6.1c of the Federal Travel Regulations (Supp. 4, August 23, 1983), incorp. by ref., 41 C.F.R. § 101-7.003 (1984) (FTR).

Dr. Brende was transferred from the Veterans Administration Medical Center in Topeka, Kansas, to the Veterans Administration Medical Center in Montrose, New York, with a reporting date of September 18, 1983. Dr. Brende signed the service agreement required by

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5 U.S.C. § 5724(i) on September 7, 1983, and, on his application for reimbursement, listed that date as the date he was notified of his impending transfer. His travel authorization was issued on September 9, 1983. Dr. Brende married Jacqueline Kershner on September 16, 1983.

On August 29, 1983, prior to her marriage to Dr. Brende, Jacqueline Kershner entered into an agreement to sell her Topeka, Kansas, residence. At that time, title to the property was in her name alone. On September 9, 1983, the date Dr. Brende's travel orders were issued, she transferred title to Dr. Brende and herself as tenants-in-common. Dr. Brende has furnished a sworn statement that the property had been his residence for several months prior to September 9, 1983, and that he was residing there when he was first notified of his transfer.

The statutory authority for reimbursement of real estate expenses is found at 5 U.S.C. § 5724a(a)(4) (1982), which provides for reimbursement of the expenses for the sale of an employee's residence at the old duty station and the purchase of a residence at the new duty station. The regulations which implement that statute are found in Chapter 2, Part 6, of the FTR, paragraph 2-6.1 of which provides as follows:

"Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him/her in connection with the sale of one residence at his/her old official station, \* \* \* Provided, That:

\* \* \* \* \*

"b. Location and type of residence. The residence or dwelling is the residence as described in 2-1.4i, \* \* \* .

"c. Title requirements. The title to the residence or dwelling at the old or new official station, \* \* \* is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family, or solely in the name of one or more members of his/her immediate family. For an employee to be

eligible for reimbursement of the costs of selling a dwelling \* \* \* the employee's interest in the property must have been acquired prior to the date the employee was first definitely informed of his/her transfer to the new official station.

"d. Occupancy requirements. The dwelling for which reimbursement of selling expenses is claimed was the employee's residence at the time he/she was first definitely informed by competent authority of his/her transfer to the new official station."

Paragraph 2-1.4i of the FTR defines official station or post of duty, including an employee's residence at that post of duty, as follows:

"Official station or post of duty.  
The building or other place where the officer or employee regularly reports for duty.  
\* \* \* With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. \* \* \*"

Thus, the prerequisites for reimbursement of house sale expenses are listed above, and all must be met before reimbursement may be allowed. First of all, the house the employee sells must be located at the employee's old duty station and, as provided in FTR para. 2-1.4i, it must be the one from which the employee regularly commutes to and from his worksite. Secondly, the employee must have been residing in the house for which he claims reimbursement of selling expenses at the time he was notified of his transfer. Finally, title to the house must be in the name of the employee alone, in the joint names of the employee and a member of his immediate family or solely in the name of a member of his immediate family. This provision is qualified by the requirement that the employee must have acquired his interest in the property prior to the date he was definitely informed of his transfer.

Although the residence in question was located at Dr. Brende's old duty station and although it appears that he was residing there at the time he was notified of his

transfer and regularly commuted from that residence, he did not acquire his interest in that residence prior to notification of his transfer. Dr. Brende's future wife transferred title to him on September 9, 2 days after the date he says he received transfer notification. Their marriage took place 7 days later, on September 16.

We held in a similar case that it was not sufficient for purposes of FTR para. 2-6.1e that an employee's future wife owned the residence at the time the employee was notified of his transfer. Ellis Slater, B-216577, March 11, 1985. We stated that to hold that such ownership was sufficient would render the requirement that an employee must have an interest in the property meaningless since in such situations the employee's interest is derivative of the spouse's interest. Thus, an employee must have an interest in the property either direct, that is in his own name, or derivative, that is in the name of a member of his immediate family, at the time he was first notified of his transfer. Since the owner of the residence here was not a member of Dr. Brende's immediate family when he was first notified of his transfer, he had neither a direct nor a derivative interest in the property at that time.

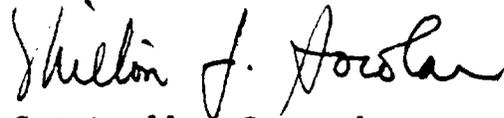
As stated in the Veterans Administration's submission, we held in 53 Comp. Gen. 90 (1973) that an employee is not precluded from receiving reimbursement for the expenses of a sale of a residence where the employee, subsequent to receiving notice of a transfer but prior to the actual date of transfer, marries and thereafter establishes a residence in a dwelling which had been owned and occupied by his wife at the time he was first officially informed of the transfer. In that case, the employee and his wife actually occupied the dwelling at the time of transfer. Dr. Brende's situation does not fall squarely within the purview of this case because he did not reside in the Topeka property after the date of his marriage. More fundamentally, however, we believe that 53 Comp. Gen. 90 should be overruled.

In 53 Comp. Gen. 90 we did not apply the regulatory requirements that an employee must have an interest and reside in the property at the time he is notified of his transfer because of the particular set of facts involved in that case. The agency had delayed the employee's transfer for six months; it was clear that the employee did not acquire the dwelling he sold for the purpose of obtaining

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financial gain; and he had in fact established a bona fide residence in his wife's home after their marriage and prior to transfer. Although these facts did make this employee's case a sympathetic one, upon reexamination of this decision, we now believe that the requirement that the employee have an interest in the property when he is first notified of his transfer must be strictly applied. As a result, we have decided to overrule 53 Comp. Gen. 90 (1973).

For the reasons stated above, we conclude that Dr. Brende's case does not meet the applicable regulatory requirements and, therefore, he is not entitled to the real estate expenses he seeks.

*for*   
Comptroller General  
of the United States